

In the Matter of the Provisional Permit of:)
) Case No. SHS-2008-3
 ROBERT BURNS,)
 Provisional Permit No. HT-1602,) **STIPULATION AND**
) **CONSENT ORDER**
 Respondent.)
)

WHEREAS, information has been received by the Idaho Speech and Hearing Services Licensure Board (the “Board”) that constitutes sufficient grounds for the initiation of an administrative action against Robert Burns (“Respondent”); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the practice of hearing aid dealing and fitting in the State of Idaho in accordance with title 54, chapter 29, Idaho Code.

A.2. The Board has issued Provisional Permit No. HT-1602 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 29, Idaho Code and the Board's rules at IDAPA 24.23.01, *et seq.*

A.3. On or about September 29, 2005, Respondent pled guilty to Grand Theft, a felony, in State v. Burns, Ada County Case No. H0501010, and an Order Withholding Judgment and Order of Probation was entered against Respondent. A true and correct copy of the Order Withholding Judgment and Order of Probation in Case No. H0501010 is attached as Exhibit A.

A.4. On or about March 7, 2007, Respondent submitted to the Board an

Application for Provisional Permit and answered “no” to the question, “Have you ever been convicted, found guilty, received a withheld judgment or suspended sentence for any State or Federal felony or other crime involving moral turpitude?”

A.5. On March 19, 2007, the Board issued Respondent Provisional Permit No. HT-1602.

A.6. On or about August 31, 2007, Respondent submitted to the Board an amended Application for Provisional Permit and answered “yes” to the question, “Have you ever been convicted, found guilty, received a withheld judgment or suspended sentence for any State or Federal felony or other crime involving moral turpitude?” Respondent also submitted a letter wherein he stated that he wished to amend his original Application for Provisional Permit and contends that he omitted information regarding his guilty plea in Case No. H0501010 upon advice of legal counsel. A true and correct copy of Respondent’s August 31, 2007, letter is attached as Exhibit B.

A.7. The allegations of Paragraphs A.3 through A.6 constitute grounds for discipline against Respondent’s license to practice as a hearing aid dealer and fitter in the State of Idaho pursuant to Idaho Code § 54-2923(2) (Board may discipline a licensee for obtaining or attempting to obtain license by fraud, misrepresentation, omission or deceit).

B. Waiver of Procedural Rights

I, Robert Burns, by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.3 through A.6. I further understand that these allegations constitute cause for disciplinary action upon my provisional permit to practice as a hearing aid dealer and fitter in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board’s orders; the right to judicial review of the Board’s orders; and all rights accorded by the Administrative Procedure Act

of the State of Idaho and the laws and rules governing the practice of hearing aid dealing and fitting in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. Provisional Permit No. HT-1602 issued to Respondent Robert Burns is hereby suspended for a period of one hundred eighty (180) days with all but thirty (30) days of said 180-day suspension withheld. During the 30-day mandatory suspension period, Respondent shall not practice hearing aid dealing and fitting in the State of Idaho. The 30-day mandatory suspension period shall commence seven (7) days from the date of entry of the Board's Order.

C.2. Respondent shall pay investigative costs and attorney fees in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.

C.3. Respondent shall comply with all terms of his criminal probation in Ada County Case No. H0501010, and with the laws and rules governing the practice of speech and hearing aid dealing and fitting in Idaho (ie., title 54, chapter 29, Idaho Code and the Board's rules at IDAPA 24.23.01 *et. seq.*).

C.4. If Respondent applies for licensure as a hearing aid dealer and fitter in the future and the Board grants such license, the Board may impose any terms on such license as it deems necessary or appropriate, in its sole discretion, to protect the public.

C.5. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a

recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless

otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 3 day of December, 2007.



Robert Burns
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 3rd day of December, 2007.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Karl T. Klein
Karl T. Klein
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-2910, the foregoing is adopted as the decision of the Speech and Hearing Services Licensure Board in this matter and shall be effective on the 4th day of January, 2008. IT IS SO ORDERED.

IDAHO STATE SPEECH AND
HEARING SERVICES LICENSURE BOARD

By Andrew J. Seitz
Andrew J. Seitz, Chair



• S H S - 2 0 0 8 - 3 •

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 7th day of January, 2008, I caused to be served a true and correct copy of the foregoing by the following method to:

Robert Burns
3307 Norfolk Way
Boise, ID 83706

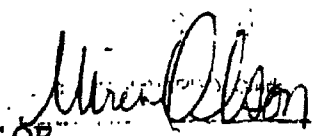
- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karl T. Klein
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail


Tana Cory, Chief
Bureau of Occupational Licenses

3:59



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

ROBERT THOMPSON BURNS,

Defendant.

Case No. H0501010

ORDER WITHHOLDING
JUDGMENT,
AND
ORDER OF PROBATION

On the 28th day of July, 2005, ROBERT THOMPSON BURNS, was arraigned before the Honorable Darla S. Williamson, and charged with the crimes of: COUNT I: GRAND THEFT, FELONY I.C. §18-2403(1), 2407(1)(b), AND COUNT II: FRAUD BY COMPUTER, FELONY I.C. §18-2202(1); and

The defendant plead guilty to the offense of I: GRAND THEFT, FELONY I.C. §18-2403(1), 2407(1)(b) (Count II having been previously dismissed pursuant to plea agreement); and requested probation; and

It appears to the Court that probation is warranted. The defendant is placed on probation and sentence is withheld for a period of fourteen (14) years under the conditions

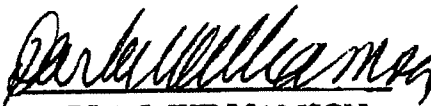
ORDER WITHHOLDING JUDGMENT, ORDER OF PROBATION AND
COMMITMENT

listed in the attached Probation Agreement, read and accepted by the Defendant this day in Court.

For record purposes only, defendant has total credit for time served in the amount of three (3) days.

AND IT IS FURTHER ORDERED that upon the expiration of the period of suspension of judgment herein fixed, or the earlier termination thereof, and upon written showing by or on behalf of the defendant that he/she has fully complied with the terms of his/her probation, then and in that event, this action shall be dismissed.

Done in open court this 29th day of September, 2005.


DARLA S. WILLIAMSON
District Judge

ORDER WITHHOLDING JUDGMENT, ORDER OF PROBATION AND
COMMITMENT

This is to certify that I have read or had read to me and fully understand and accept all the conditions, regulations and restrictions under which I am being granted probation. I will abide by and conform to them strictly and fully understand that my failure to do so may result in the revocation of my probation.

Probationer

Date of Acceptance

Probation Officer

ORDER WITHHOLDING JUDGMENT, ORDER OF PROBATION AND
COMMITMENT

CERTIFICATE OF MAILING

I hereby certify that on this 29 day of September, 2005, I mailed (served) a true and correct copy of the within instrument to:

Ada County Prosecutor
INTERDEPT MAIL

Rob Kautz
Attorney at Law
355 West Myrtle, Suite LP 102
Boise, Idaho 83702

Ada County Jail
INTERDEPT. MAIL

Probation & Parole-PSI Department
INTERDEPT. MAIL-Pickup Box

J. DAVID NAVARRO
Clerk of the District Court

By: *Miriam Chao*
Deputy Clerk

**ORDER WITHHOLDING JUDGMENT, ORDER OF PROBATION AND
COMMITMENT**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO

Plaintiff,

vs.

Robert T. Burns

Defendant.

Case No. HA 501010

PROBATION AGREEMENT

☐ SUSPENDED IMPOSITION OF SENTENCE☒ WITHHELD JUDGMENTTERM OF PROBATION: 14 years beginning Sept 29, 2005

PROBATION CONDITIONS:

1. Probation is granted to and accepted by the probationer, subject to all its terms and conditions, and with the understanding that the Court may, at any time, in case of the violation of the terms of probation, cause the probationer to be returned to the Court, for the imposition of sentence as prescribed by law, or any other punishment as the court may see fit to hand down.

2. Probationer shall be under the legal custody and control of the Director of Probation and Parole of the State of Idaho and the District Court and subject to the rules of probation as prescribed by the Board of Correction and the District Court.

3. General Conditions applicable to all probationers, to-wit:

- a. Probationer does hereby agree and consent to the search of his/her person, automobile, real property, and any other property, at any time, and at any place, by any law enforcement officer, peace officer, or probation officer, and does waive his/her constitutional rights to be free from such searches.
- b. Probationer shall not violate State, Federal, or Municipal laws.
- c. The probation officer shall approve all residence. Probationer shall not change residence without first obtaining written permission from the probation officer.
- d. Probationer shall submit truthful written report to the probation officer each and every month and report in person when requested.
- e. Probationer shall not leave the State or Fourth Judicial District (Ada, Boise, Elmore, and Valley counties) without first obtaining written permission from the probation officer.
- f. Probationer shall complete any training or counseling program established by the probation officer.
- g. Probationer shall contact Vocational Rehabilitation or some other vocational program identified by his/her probation officer, get an evaluation and follow all recommendations made.
- h. If Probationer requests probation services be transferred outside the Fourth Judicial District, Probationer agrees that probation violation documents received from the agency supervising probationer, shall be admissible into evidence without the state having to show that such evidence is credible and reliable, and probationer waives any right to confront the author of such documents.
- i. Probationer shall become and remain fully employed or be enrolled as a full time student; and shall not terminate employment without securing other employment.
- j. Probationer shall submit at probationer's expense to a chemical test of blood, breath or urine for intoxicating substances upon request of probation or other law enforcement.
- k. Probationer shall not associate with individuals specified by the probation officer.
- l. Probationer shall not frequent any establishment where alcohol is a major source of income.
- m. Probationer shall submit to a polygraph examination at probationer's own expense if requested by the probation officer.
- n. Probationer shall not purchase, carry or possess any firearm/s or other weapons.
- o. Probationer shall not purchase, possess or consume any alcoholic beverages while on probation.
- p. Probationer shall not purchase, possess, or consume any drug or narcotic unless specifically prescribed by a medical doctor.
- q. If probationer does not have a high school degree, the probationer shall acquire a GED or high school diploma with the time set by the probation officer.
- r. If the probationer has been ordered to pay child support, the probationer shall commence and regularly pay court ordered child support payments and submit written evidence of the same to the probation officer.
- s. Probationer shall not operate any motorized vehicle while on probation unless properly licensed and insured.

4. SPECIAL CONDITIONS (THOSE CHECKED), TO-WIT:

Probationer shall pay \$_____ public defender reimbursement, \$ 8126.00 restitution, \$ 97.54 court costs, \$_____ fines, any applicable community service fee, and probation supervision fees (I.C.20-225), all to be paid as scheduled by the probation officer.

☐ Probationer shall not associate with _____ unless specifically approved by the probation officer.

☒ Probationer shall complete the following programs: cognitive self change (Huntington)

☐ Probationer shall complete English as a Second Language classes @ BSU located at 1464 University Drive (in the Technical Services Building) with Seland College of Applied Technology.

☐ Probationer shall attend _____ AA/NA meetings, per week for _____ months and submit written confirmation of the same to the probation officer, or some other program approved the probation officer.

☐ Probationer shall attend 30 AA/NA meetings, in the first 30 days after he/she is released from local incarceration.

☒ Probationer shall complete 100 hours of community service work as set by his/her probation officer. The probationer is required to pay a 60 cents per hour community service fee to provide workers compensation insurance (SB 1355, Ch.233, '94 Sess. Laws) for a total fee of \$60.00.

☒ The probationer shall serve 50 days in the Ada County Jail work release as scheduled by the probation officer.

☒ Probationer is ordered to have work release privileges and must make those arrangements by 11-30-05 and begin serving within six (6) months of this judgment.

☒ Probationer shall serve 180 days in jail to be imposed at the discretion of the probation officer, who has the authority to immediately deliver probationer to the sheriff to serve this time. Any time discretionary jail time is imposed, the probation officer shall immediately notify the court in writing of the time imposed and the reasons therefore, for review by the court. Probationer may have jail options if approved by probation officer.

☐ Probationer shall complete 20 days in the Sheriff Inmate Labor Detail program as set by the probation officer.

☐ Probationer shall provide a DNA sample and right thumbprint to his/her probation officer not later than _____.

☐ The Court allows the probationer to be transferred by the Board of Corrections to the State of _____.

☐ Probationer shall complete the ABC program and substance abuse program in the Ada County Jail and upon completion, she/he may apply for early release.

☒ Probationer shall not go to or enter the premises of the Egg Center.

☒ Probationer may apply for release after 10 days if registration paid in full.

☒ 5. PROBATIONER, IF PLACED ON PROBATION TO A DESTINATION OUTSIDE THE STATE OF IDAHO, OR LEAVES THE CONFINES OF THE STATE OF IDAHO, WITH OR WITHOUT PERMISSION OF THE DIRECTOR OF PROBATION AND PAROLE, DOES HEREBY WAIVE EXTRADITION TO THE STATE OF IDAHO, AND ALSO AGREES THAT THE PROBATIONER WILL NOT CONTEST ANY EFFORT BY ANY STATE TO RETURN THE PROBATIONER TO THE STATE OF IDAHO.

This is to certify that I have read or had read to me and fully understand and accept all the conditions, regulations and restrictions under which I am being granted probation. I will abide by and conform to them strictly and fully understand that my failure to do so may result in the revocation of my probation and commitment to the Board of Correction to serve the sentence originally imposed.

DATED: 9-20-05

[Signature]
Probationer's Signature

August 31, 2007

State of Idaho
Bureau of Occupational Licenses
1109 Main Street, Suite 220
Boise, Idaho 83702

RE: Robert Burns
Hearing Aid Dealer & Fitter, License #HT-1602

To Whom It May Concern,

It has come to my attention from a colleague of mine that when I originally submitted my application to the Bureau of Occupational License for a Hearing Aid Dealer & Fitter Provisional Permit, I omitted some information that may in fact be pertinent to the approval process. While I take full responsibility for the omission, I did this at the advice of legal counsel.

The omission in question is on page 3, (form BOL-SHS-PP-11/05), section 8. On my original application I had answered this question as "no". In fact, I would like to amend my answer to "yes".

The incident in question, Case #H0501010, was a grand theft indictment which resulted in me receiving a withheld judgement. Along with this I received an order of restitution of \$8126.00, 5 months in jail, and probation of 14 years. I have done all asked of me in the aftermath of this terrible mistake in judgement.

To say the least I am not proud of having any of this attached to what was before my good name. I had never had any legal issues of any kind, much less of this magnitude. I involved myself in a business scheme that I should have known was not above board. While this certainly calls my character and judgement into question at the time of my involvement, again, prior to this I had been an exemplary citizen, involved in several hundred hours of volunteer work with youth in the Treasure Valley.

I'd also like the board to please factor in my spotless record as a the Hearing Aid Fittier since my Temp Permit was issued in March of 2007. I have fit almost a dozen patients with hearing instruments, and counseled and assisted dozens more with integrity, caring and sincerity. I have also studied many hours toward attaining my permanent license. I believe my supervisor would echo these remarks.

I only ask the board to consider all of the above and accept my sincerest apologies for any perception that I was trying to mislead the board. I hope my coming forward now will go some distance to proving that.

I will gladly answer any further questions regarding this matter, either in person, or, on the phone. I can be reached at (208) 921-4131.

Sincerely,



Robert Burns
3307 Norfolk Way
Boise, Idaho 83706